

claim, the Examiner consider the species of Claims 31-36, presently withdrawn from the Examiner's consideration

Provisional Double Patenting Rejection

Claims 1-10 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 4-12 of copending Application No. 10/013,811. Applicants note the provisional rejection.

The Rejection of Claims 1-7, 10, 16, 25-30, and 37-40 Under 35 U.S.C. § 102(b)

Claims 1-7, 10, 16, 25-30, and 37-40 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,549,589, issued to Horney et al. Applicants traverse the rejection for the following reasons.

Claims 1 and 25 are the pending independent claims. Claims 2-7, 10, 16, 37, and 39 depend from Claim 1, and Claims 26-30, 38, and 40 depend from Claim 25. Claims 1 and 25 each recite a layer that includes a refined blend of crosslinked and noncrosslinked cellulosic fibers.

The Examiner states that the Horney reference describes a fibrous layer comprising a refined blend of crosslinked fibers and noncrosslinked fibers. Applicants respectfully disagree.

The Horney reference describes a fluid distribution member that includes three basic components: (1) chemically stiffened, twisted, and curled bulking fibers; (2) high surface area fibers; and (3) thermoplastic binder fibers. See, for example, column 4, lines 58-61. High surface area fibers include "highly refined, nonstiffened, cellulosic fibers." See column 7, lines 1-9. In contrast to the claimed invention, the cited reference fails to describe a fibrous layer that includes a refined blend of crosslinked and noncrosslinked fibers. The cited reference is silent regarding a refined blend of fibers of any type.

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Because the cited reference fails to describe a fibrous layer that includes a refined blend of crosslinked and noncrosslinked fibers, the reference is not anticipatory. Withdrawal of this grounds for rejection is respectfully requested.

Furthermore, the cited reference fails to teach or suggest the claimed invention. As noted above, the cited reference describes a member having three components: stiffened fibers, high surface area fibers, and thermoplastic fibers. The reference also teaches that the high surface area fibers can be refined, nonstiffened fibers. The reference fails to teach or suggest the use of refined, stiffened fibers and in no way teaches or suggests a refined blend of crosslinked and noncrosslinked fibers. Because the cited reference fails to teach, suggest, provide any motivation to make, or otherwise renders obvious the claimed invention, the claimed invention is nonobvious and patentable over the cited reference.

The Rejection of Claims 17-24 Under 35 U.S.C. § 103(a)

Claims 17-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,549,589, issued to Horney et al. Applicants traverse the rejection for the following reasons.

Claims 17-24 depend from Claim 1. For the reasons noted above, the cited reference fails to teach or suggest the invention of Claim 1.

Because the cited reference fails to teach or suggest the invention of Claim 1, the cited reference cannot teach or suggest the invention of Claims 17-24. Withdrawal of this grounds for rejection is respectfully requested.

The Rejection of Claims 8, 9, 11, 12, 14, and 15 Under U.S.C. § 103(a)

Claims 8, 9, 11, 12, 14, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,549,589, issued to Horney et al., in view of WO 98/51251. Applicants traverse the rejection for the following reasons.

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Claims 8, 9, 11, 12, 14, and 15 depend from Claim 1. The deficiencies of the teaching of the Horney reference are not cured by the teaching of WO 98/51251. The cited references fail to teach or suggest a fibrous layer that includes a refined blend of crosslinked and noncrosslinked cellulosic fibers, as in the claimed invention.

Because the cited references, either alone or in combination, fail to teach, suggest, provide any motivation to make, or otherwise render obvious the claimed invention, the claimed invention is nonobvious and patentable over the cited references. Withdrawal of this grounds for rejection is respectfully requested.

The Rejection of Claim 13 Under 35 U.S.C. § 103(a)

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,549,589, issued to Horney et al., in view of WO 98/51251 and further in view of U.S. Patent No. 6,059,924, issued to Hoskins. Applicants traverse the rejection for the following reasons.

Claim 13 depends from Claim 1. The deficiencies of the teaching of the Horney reference and WO 98/51251 are not cured by the Hoskins reference. The cited references fail to teach or suggest a fibrous layer that includes a refined blend of crosslinked and noncrosslinked cellulosic fibers, as in the claimed invention.

Because the cited references, either alone or in any combination, fail to teach, suggest, provide any motivation to make, or otherwise render obvious the claimed invention, the claimed invention is nonobvious and patentable over the cited reference. Withdrawal of this grounds for rejection is respectfully requested.

Rejoinder of Claims 31-36

Applicants respectfully request that Claims 31-36 be rejoined and examined in this application.

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